

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6826 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HIRABEN WD/O BECHARBHAI MADHUBHAI

Versus

COMPETENT AUTHORITY AND ADDL COLLECTOR

Appearance:

MR MTM HAKIM for Petitioners

Mr. Mandak, Asstt. Govt. Pleader for Respondent No. 1, 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/02/99

ORAL JUDGEMENT

Rule.

Mr. Mankad, learned AGP waives service of Rule for respondents.

2. With the consent of the learned Counsel for the parties the matter is taken up for final disposal today.

3. In this petition under Articles 226 and 227 of the Constitution the petitioners have challenged the order dated 17-7-1998 passed by the competent authority and Addl. Collector ULC, Vadodara, rejecting the petitioners' application under Section 21(1) of the Urban Land Ceiling Act, 1976 (hereinafter referred to as the Act) on the ground that the application was not filed within prescribed time limit.

4. The facts leading to the filing of this petition, as averred by the petitioners, are :

The petitioners are holders of certain lands in Vadodara agglomeration. In respect of land admeasuring 1860 sq.mts. of revenue survey No. 205 of village Tarsali, Vadodara, alongwith other lands of the petitioners in Survey Nos. 255 and 258/2 of village Tarsali, by order dated 12-2-1980 (Annex.B) the State Government had earlier granted exemption under Section 20(1) of the Act for agricultural operations. Thereafter the petitioners applied to the Government for revocation of the said exemption on the ground that on the surrounding lands residential societies had come up and therefore, the exemption for agricultural activities may be withdrawn. Accordingly by order dated 20-12-1988 (Annex.C) the Government revoked the exemption granted earlier on 12-2-1980 . The petitioners thereafter filed application under Section 21 of the Act on 15-7-1989 for permission to put up a scheme for constructing dwelling units for weaker sections of the society. By order dated 29-6-1991 (Annex.E) the competent authority accepted the application after holding that the application was filed within prescribed time limit and the papers were sent to the Executive Engineer, R.& B Vadodara Circle for technical scrutiny of the scheme proposed by the petitioners. The Competent authority by his letter dated 10-11-1994 (Annexure F) informed the petitioners that the Government had instructed the competent authority not to approve the scheme. Hence the competent authority had fixed the hearing on 17-11-1994 to give the petitioner an opportunity before passing the order of disapproval . Thereafter by order dated 17-7-1998 (Annexure A) the competent authority rejected the petitioners' application under section 21 of the Act on the ground that it was not filed within prescribed time limit because the exemption for agricultural operations under section 20(1) of the Act was granted by Government suo motu on 12-2-1980 i.e. after 31-3-1979 and therefore, the application under Section 21 of the Act filed on 15-7-1989 was not within

the prescribed time limit.

5. Mr. Hakim, learned Counsel for the petitioners has relied upon the provisions of Rule 11 of the Urban Land (Ceiling and Regulation) Rules, 1976. Mr. Hakim has submitted that since the exemption under Section 20(1) of the Act was revoked on 20-12-1988 the application under Section 21 of the Act filed on 15-7-1989 was obviously within the time limit of 1139 days from the date of cessation of exemption.

6. On the other hand, learned Assistant Government Pleader Mr. Mankad submitted that under Rule 11 the petitioners were required to submit their application within 1139 days from the commencement of the Act or within 1139 days from the date of revocation of the exemption granted under Section 20(1) of the Act for agricultural operations. Since the petitioners had not applied for exemption under Section 20(1) of the Act for agricultural activities within 1139 days of the date of commencement of the Act (i.e. by 31-3-1979) the period during which the agricultural exemption operated in favour of the petitioners after 31-3-1979 cannot be of any advantage to the petitioners for the purpose of extending the period of limitation under proviso (b) to Rule 11 and, therefore, even if application under section 21 of the Act is filed within 1139 days of the revocation of the agricultural exemption, the application cannot be said to be within the prescribed time limit if the previous exemption under section 20(1) of the Act was not applied for or granted within 1139 days of the date of commencement of the Act (i.e. by 31-3-1979).

7. Having heard the learned Counsel for the parties, it appears that while the arguments advanced by the learned Asstt. Govt. Pleader may *prima facie* seem to be attractive, on closer analysis the argument cannot be accepted. It is true that the substantive part of Rule 11 of the Rules requires application under Section 21 of the Act to be made within 1139 days of the date of commencement of the Act i.e. 31-3-1979 but proviso (b) to the said rule in unmistakable terms provides that when the land was exempted under Section 19(1)(iv) or Section 20(1) of the Act and the land ceases to be so exempted, the time limit within which the holder may file declaration under Section 21 of the Act would be 1139 days from the date of cessation of the exemption. The Act or the Rules do not provide for any time limit for application for exemption under section 20(1) of the Act. Section 21 in so far as it is relevant for the purpose of this petition provides that notwithstanding anything

contained in any of the foregoing provisions of Chapter III of the Act, where a person holds any vacant land in excess of the ceiling limit and such person declares within such time, in such form and in such manner as may be prescribed before the competent authority that such land is to be utilised for the construction of dwelling units for the accommodation of the weaker sections of the society, in accordance with any scheme approved by the specified authority, then the competent authority may, after making such inquiry as it deems fit, declare such land not to be excess land.

Rule 11 prescribes the time limit of 1139 days from the date of commencement of the Act for making an application under Section 21 of the Act but the proviso (b) to the said rule reads as under:

(b). where any vacant land held by any person and exempted by clause (iv) of sub-section (1) of Section 19 or sub-section (1) of Section 20 ceases to be so exempted and as a consequence thereof the extent of such land, together with the extent of the vacant land, if any, already held by him, exceeds in the aggregate the ceiling limit, then the time within which such person may file the declaration referred to under subsection (1) of Section 21 shall be one thousand one hundred and thirty nine days from the date on which such vacant land ceases to be so exempted."

8. By some misconception the authorities have proceeded on the footing as if the limitation period of 1139 days provided in Rule 11 is applicable to application under Section 20(1) of the Act also. But in view of the aforesaid statutory provisions and in absence of any time limit for making application under Section 20(1) of the Act, it has to be held that when an application under Section 21 of the Act is filed after revocation of exemption under Section 20(1) of the Act, the date on which exemption under Section 20(1) of the Act was granted or the date on which such exemption was applied for cannot have any relevance for the purpose of deciding whether the application under Section 21 of the Act was made within time limit prescribed. In other words, irrespective of the fact whether the application under Section 20(1) of the Act was made or granted within 1139 days from the commencement of the Act (i.e. before

1-4-1979) or thereafter, once the application under Section 21 of the Act is found to have been made within 1139 days of cessation of the exemption earlier granted under Section 19(1)(iv) or Sec.20(1) of the Act, the application has to be held as having been filed within the prescribed time limit.

9. This Court has already taken the same view in Special Civil Application No. 10607 of 1994 decided on 27-3-1996 and the Letters Patent Appeal against the said decision is dismissed.

10. In view of the aforesaid discussion, it is clear that the competent authority as well as the State Government under whose instructions the competent authority has acted, completely misdirected themselves in law in holding that the application of the petitioners was not filed within the prescribed time limit.

11. This petition is therefore, allowed. The impugned decision as communicated by letter dated 17-7-1998 (Annexure A) is quashed and set aside and the respondents are directed to consider the petitioners' application dated 15-7-1989 under Section 21 of the Act for the land admeasuring 1860 sq.mts in Survey No. 255 in village Tarsali in accordance with law and on merits by treating the same as having been filed within the prescribed time limit.

12. Since the application was made for exemption under Section 21 of the Act in the year 1989, the respondents are directed to process the said application and take decision thereon as expeditiously as possible and in any case within three months from the date of receipt of a certified copy of this order.

13. Rule is made absolute accordingly with no order as to costs.

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